IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CABELA'S INCORPORATED,

Plaintiff,

v.

THE SPORTSMAN'S GUIDE, INC.,

Defendant.

Civil Case No. _________

COMPLAINT AND DEMAND FOR JURY TRIAL

COMPLAINT FOR TRADE DRESS INFRINGEMENT

COMES NOW Plaintiff, Cabela's Incorporated ("Plaintiff" or "Cabela's"), by and through its attorneys, Quarles & Brady LLP and Lamson, Dugan & Murray, LLP, and for its complaint against The Sportsman's Guide, Inc. ("Defendant" or "TSG"), hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for trade dress infringement and unfair competition, arising from TSG's infringing trade dress on its Guide Gear Ultimate Outfitter Tent.

2. Cabela's is the senior user of the Alaknak Tent Trade Dress found on the Cabela's Ultimate Alaknak Tent, having used the distinctive trade dress in connection with Alaknak Tent as early as 1997. TSG's more recent adoption of the Alaknak Tent Trade Dress has infringed on Cabela's trade dress rights by using the identical trade dress elements in the identical configuration for its Guide Gear Ultimate Outfitter Tent.

3. TSG's continued infringing use of the Alaknak Tent Trade Dress is likely to cause, if it has not already caused, a mistaken belief that Cabela's products are in fact TSG's products or that the companies are somehow related. As a result, Cabela's has suffered harm to its trademark rights in the Alaknak Tent Trade Dress, its product identity, and its goodwill and

reputation. Accordingly, the harm suffered by Cabela's as a result of TSG's infringement and unfair competition is irreparable, and TSG's wrongful activities will continue unless enjoined by the Court.

4. Cabela's asks that the Court: (1) find that TSG infringes Cabela's Alaknak Tent Trade Dress; (2) enjoin TSG from further use of the Alaknak Tent Trade Dress; and (3) award Cabela's damages as allowed under the Lanham Act and at common law.

THE PARTIES

5. Plaintiff Cabela's is a Delaware corporation with its principal place of business at One Cabela Drive, Sidney, Nebraska 69160.

6. Upon information and belief, Defendant TSG is a Minnesota Corporation with its principal place of business at 411 Farwell Avenue, South St. Paul, Minnesota 55075.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, 1338 and 15 U.S.C. § 1121.

8. This Court has personal jurisdiction over TSG under Neb. Rev. Stat. § 25-536 because, upon information and belief, TSG conducts business in the State of Nebraska, including selling and offering to sell its infringing products, directly or through intermediaries, in or into Nebraska and this judicial District, thereby causing injury and damages in Nebraska and this judicial District, which may result from acts committed outside Nebraska or the District, including but not limited to utilizing their own established distribution channels or distribution channels of an intermediary to market and sell infringing products in Nebraska and this District. In addition, as Cabela's principal place of business is in Nebraska and in this District, TSG's infringement of Cabela's intellectual property causes a direct harm to Cabela's in this district.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

THE FACTS

10. Cabela's incorporates by reference the preceding paragraphs of this Complaint as if set forth here in full.

Cabela's

11. Cabela's is the World's Foremost Outfitter of hunting, fishing and outdoor gear. Since its founding in 1961 in Chappell, Nebraska, Cabela's has grown into a world-famous retailer through its world-famous catalog business and destination retail stores. The company produces nearly 100 different catalogs per year, including specialty books focusing on such outdoor pursuits as archery, fly-fishing and boating, as well as massive Spring and Fall Master catalogs. Internationally known as a source of affordable, high-quality outdoor equipment, Cabela's catalogs are shipped to all 50 states and 125 countries.

12. By 2001, the Cabela's Catalog was ranked as the fifth most popular catalog, behind such direct-mail giants as J.C. Penney and Sears, in a Consumer Shopping Survey administered by Catalog Age magazine. Other awards include: ShotBusiness magazine's Retailer of the Year; Sporting Goods Business magazine's Specialty Retailer of the Year; and the BizRate.com Circle of Excellence Award for outstanding web site performance over the holiday season.

13. By 2006, Cabela's web site was ranked No. 1 in the outdoor retailer industry and the company was named Company of the Year in Sporting Classics magazine's prestigious Awards of Excellence. Over the years Cabela's has received numerous recognitions for its work with conservation organizations and Cabela's was named as one of the Top 100 Companies to Work For in Fortune magazine's January 2000 issue.

14. Today, in the United States alone, Cabela's also has more than 60 stores operating in 35 states where it offers its high quality, fishing, hunting, outdoor and recreational equipment to millions of customers visiting its stores each year.

Cabela's Alaknak Tent Trade Dress

15. Cabela's first introduced the Alaknak Tent and its current Alaknak Tent Trade Dress and design in 1997.

16. Below is an image of the assembled Alaknak Tent.

17. Cabela's use of the Alaknak Tent Trade Dress on its tents has been continuous since it first began using the trade dress and design.

18. Cabela's has sold tens of thousands of Alaknak Tents, resulting in substantial sales.

TSG's Infringing Use of the Alaknak Tent Trade Dress

19. Upon information and belief, TSG first began offering its Guide Gear Ultimate Outfitter Tent in Spring 2016.

20. Below is an image of the assembled Guide Gear Ultimate Outfitter Tent.

21. Side by side comparisons show the identical design elements of the two tents.

TSG's Guide Gear Ultimate Outfitter Tent	Cabela's Ultimate Alaknak Tent
Web page image	

<table>
<tr><th>TSG's Guide Gear Ultimate Outfitter Tent</th><th>Cabela's Ultimate Alaknak Tent</th></tr>
<tr><td> </td><td> </td></tr>
<tr><td colspan="2">Front Right 3/4 View</td></tr>
<tr><td> </td><td> </td></tr>
<tr><td colspan="2">Front Right 3/4 View, Alternate View</td></tr>
<tr><td> </td><td> </td></tr>
<tr><td colspan="2">Right Side with Stove Stack Opening</td></tr>
</table>

TSG's Guide Gear Ultimate Outfitter Tent	Cabela's Ultimate Alaknak Tent
Right Side with Stove Stack Opening Detail	
Rear Left 3/4 View	

TSG's Guide Gear Ultimate Outfitter Tent	**Cabela's Ultimate Alaknak Tent**
Inside Right Side with Stove Stack Opening Detail, Side Vent, and Compartments	
Inside Rear with Rear Vent and Compartments	
Inside Left Side with Side Vent and Compartment	

TSG's Guide Gear Ultimate Outfitter Tent	**Cabela's Ultimate Alaknak Tent**
Logo Placement at Right of Door	

22. TSG further compounds the confusion by using the words "Ultimate" and "Outfitter" in its product name.

23. TSG's Guide Gear Ultimate Outfitter Tent is reminiscent of Cabela's Ultimate Alaknak Tent. Moreover, Cabela's Alaknak Tent is part of Cabela's Outfitter Series, which is emblazoned on the Alaknak Tent to the right of the door. Not only does TSG use the word "Outfitter" in its name, it also emblazons its Guide Gear logo to the right of the door.

24. Indeed, customers recognize the identical nature of the tents. A review posted by a TSG customer on its Guide Gear Ultimate Outfitter Tent product page stated that: "I have been wanting one **just like this** for a couple of years but didn't want to pay $900.00 for it." (emphasis added)

25. The same customer goes on to state that "[t]he price is considerably less than the Alaknak."

26. Cabela's Ultimate Alaknak Tent retails for $899.99.

COUNT I

(Trade Dress Infringement Under Lanham Act § 43(a) (15 U.S.C. §1125(a))

27. Cabela's incorporates by reference the preceding paragraphs of this Complaint as if set forth here in full.

28. Cabela's has continuously and extensively used the Alaknak Tent Trade Dress throughout the United States in connection with its Ultimate Alaknak Tent.

29. Cabela's has made significant expenditures to nationally advertise and promote its tents, including the Ultimate Alaknak Tent, and the combination of elements comprising its trade dress.

30. The Alaknak Tent Trade Dress has come to represent and symbolize the enviable reputation and valuable goodwill of Cabela's among members of the trade, recreational outdoor community, and purchasing public with regard to tents.

31. Cabela's has a protectable trade dress interest in the combination of elements that make up its Cabela's Ultimate Alaknak Tent product design. This combination is distinctive and has acquired secondary meaning.

32. TSG is not authorized to use Cabela's Alaknak Tent Trade Dress.

33. TSG has designed its Guide Gear Ultimate Outfitter Tent in an identical or nearly identical manner using the same combination of elements that make up the Alaknak Tent Trade Dress. Shown above in paragraphs 16, 20 and 21 are photographs showing the Alaknak Tent Trade Dress design elements in an assembled tent.

34. TSG is infringing Cabela's rights by giving customers and potential customers the impression that its Guide Gear Ultimate Outfitter Tent is affiliated with, sponsored by, or associated with Cabela's, or that it has the same quality, customer service, or warranties that customers have come to expect from Cabela's.

35. TSG infringes Cabela's rights by offering to sell, advertising, and selling tents that are confusingly similar to Cabela's tents, which has caused actual confusion and is likely to cause additional confusion or mistake or deception among purchasers of outdoor recreational equipment as to some connection, authorization or relationship that exists between TSG and Cabela's, all in violation of 15 U.S.C. § 1125(a), Lanham Act § 43(a).

36. TSG's conduct has irreparably injured and will continue to injure Cabela's through diversion of Cabela's goodwill and sales to TSG, and by diminishing Cabela's goodwill and reputation. Cabela's seeks such financial remedies as may be proved at the time of trial.

37. TSG will continue to cause a likelihood of confusion and deception unless it is enjoined by this Court.

38. Given the identity or near identity of TSG's tent to Cabela's tent, and the deliberate similarity in the name, TSG's conduct is willful and entitles Cabela's to an award of increased damages.

COUNT II

(Common Law Unfair Competition)

39. Cabela's incorporates by reference the preceding paragraphs of this Complaint as if set forth here in full.

40. TSG's conduct constitutes an unfair method of competition in violation of common law.

41. For example, TSG's continued use of the word "Ultimate" in its product name, Guide Gear Ultimate Tent, compounds the confusion created by its other infringement because of its confusing similarity to Cabela's product name, Cabela's Ultimate Alaknak Tent.

42. TSG also uses the word "Outfitter" in its product name, which is the same name Cabela's uses to designate its family of Alaknak tents, the Cabela's Outfitter Series Tents.

43. Unless the Court enjoins TSG from employing such unfair methods, Cabela's will suffer irreparable harm for which it has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Cabela's respectfully requests judgment and relief against TSG as follows:

A. A determination that Cabela's has protectable trade dress rights in its Alaknak Tent Trade Dress;

B. A determination that TSG infringes Cabela's Alaknak Tent Trade Dress;

C. An award of damages to Cabela's, pursuant to 15 U.S.C. § 1117(a), including prejudgment and post-judgment interest, in an amount adequate to compensate for TSG's infringement of Cabela's trade dress rights;

D. Disgorgement of all moneys realized by TSG through sales of its Guide Gear Ultimate Outfitter Tent;

E. Cabela's actual costs and attorneys' fees as provided under the Lanham Act, 15 U.S.C. §§ 1117, 1125(a);

F. Treble damages as provided under 15 U.S.C. § 1117;

G. A temporary and permanent injunction prohibiting TSG, and all those in active concert and participation with it, from using Cabela's Alaknak Tent Trade Dress or any trade dress that is confusingly similar to Cabela's pursuant to 15 U.S.C. § 1116;

H. An order that TSG be directed to file with the Court and serve on Cabela's, within thirty (30) days after issuance of an injunction, a report in writing and under oath setting forth in detail the manner and form in which TSG has complied with the injunction pursuant to 15 U.S.C. § 1116; and

I. Such other and further relief as the Court deems necessary and just.

JURY DEMAND

Cabela's demands a trial by jury on all issues properly tried to a jury.

REQUEST FOR PLACE OF TRIAL

Cabela's requests that Omaha, Nebraska be designated as the place of trial.

Dated: June 8, 2017

Respectfully submitted,

CABELAS'S INCORPORATED, Plaintiff,

By: */s/ Stacy L. Morris*

Stacy L. Morris, #22761
smorris@ldmlaw.com
Daniel J. Hassing, #24408
dhassing@ldmlaw.com
LAMSON, DUGAN & MURRAY, LLP
10306 Regency Parkway Drive
Omaha, Nebraska 68114-3708
Tel.: 402.397.7300
Fax: 402.397.7824

Christian G. Stahl
christian.stahl@quarles.com
QUARLES & BRADY LLP
300 North LaSalle Street, Suite 4000
Chicago, Illinois 60654-3422
Tel.: 312.715.5000
Fax: 312.715.5155

Gregory P. Sitrick
gregory.sitrick@quarles.com
Otto Hinks
otto.hinks@quarles.com
QUARLES & BRADY LLP
One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391
Tel.: 602.229.5200
Fax: 602.229.5690

ATTORNEYS FOR PLAINTIFF CABELA'S INCORPORATED

QB\43093103.3